

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

UNITED STATES OF AMERICA :
UNITED STATES COAST GUARD : DECISION OF THE
VICE COMMANDANT
vs. :
ON REVIEW
MERCHANT MARINER'S DOCUMENT : NO. 18
NO. Z569 27 3773 :
Issued to: David D. CLAY :

The decision and order of the Administrative Law Judge, issued on 17 March 1992 at Alameda, California (Docket No.

11-0007-PLM-92, U.S./USCG v. David D. CLAY), has been called up for review under the provisions of 46 C.F.R. §5.801.

In that decision and order, the Administrative Law Judge ruled on issues recently decided in Vice Commandant Decision on Appeal 2535 (SWEENEY). Of particular significance in SWEENEY, *supra*, is the fact that, absent proof of cure, an order of revocation is statutorily mandated (pursuant to 46 U.S.C. §7704(c)) where drug use is found proved. It also promulgated

specific standards for consideration in making the determination whether the Respondent has been cured.

Essentially, the Administrative Law Judge may grant a continuance enabling the respondent to prove cure if the respondent has "demonstrated substantial involvement in the cure process by proof of enrollment in an accepted rehabilitation program." As established by SWEENEY, *supra*, the following two factors satisfy the definition of cure:

1. The respondent must have successfully completed a bonafide drug abuse rehabilitation program designed to eliminate physical and psychological dependence. This is interpreted to mean a program certified by a governmental agency, such as a state drug/alcohol abuse administration or in the alternative, certified by an accepted independent professional association, such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO).
2. The respondent must have successfully demonstrated a complete non-association with drugs for a minimum period of one year following successful completion of the rehabilitation program. This includes participation in an active drug abuse monitoring program which incorporates random, unannounced testing during that year.

SWEENEY, *supra*, at 8.

Significantly, CLAY, *supra*, is the first case involving drug use decided subsequent to SWEENEY, *supra*. The Administrative Law Judge specifically citing to SWEENEY, *supra*, appropriately applied the cure requirements established in the Vice Commandant Decision on Appeal.

Of major significance in the instant case is the Administrative Law Judge's consideration of whether the Respondent could retain possession of his license and/or document pending the

completion of the cure requirements. This issue was not addressed in SWEENEY, supra. In the instant case, the

Administrative Law Judge, relying on 46 C.F.R. §5.521(b) determined that, since the Investigating Officer had presented a prima facie case of drug use, the individual would pose a danger to public health, interest or safety at sea and accordingly refused to return the Respondent's document.

I specifically concur with the Administrative Law Judge's ruling and rationale in refusing to return the document. Upon review, I conclude that, where a prima facie case of drug use is established by the Investigating Officer to the satisfaction of the Administrative Law Judge, sufficient cause exists to withhold return of the license and/or document pursuant to the provisions of 46 C.F.R. §5.521(b).

ORDER

The decision and order issued by the Administrative Law Judge in the case of Docket No. 11-0007-PLM-92 (U.S./USCG v. David D. CLAY) is AFFIRMED.

//S// MARTIN H. DANIELL
MARTIN H. DANIELL
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 30th day of
March, 1992.